

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ZOSTAVAX (ZOSTER VACCINE	:	MDL NO. 2848
LIVE) PRODUCTS LIABILITY	:	
LITIGATION	:	
_____	:	
	:	
THIS DOCUMENT RELATES TO:	:	
JANE PATTERSON	:	
	:	
v.	:	
	:	
MERCK & CO., INC., et al.	:	CIVIL ACTION NO. 18-20008
_____	:	_____

PRETRIAL ORDER NO. 23

AND NOW, this ~~16th~~ day of October, 2018, it is hereby  
ORDERED that:

(1) The motions of defendants Merck & Co. Inc., Merck Sharp & Dohme Corp., and McKesson Corp. to dismiss the first amended complaint of plaintiff (Doc. ## 49, 50) are GRANTED with prejudice with respect to fraud counts VI, VII, and IX on the ground that plaintiff has failed to plead with the particularity required by Rule 9(b) of the Federal Rules of Civil Procedure, as more fully explained in Bentley v. Merck & Co., 2017 WL 2349708 (E.D. Pa. May 30, 2017). See also Erickson v. Merck & Co., 2018 WL 2357273 (M.D. Fla. May 17, 2018); Erickson v. Merck & Co., 2018 WL 3626469 (M.D. Fla. Feb. 22, 2018); Erickson v. Merck & Co., 2017 WL 9938491 (M.D. Fla. Dec. 8, 2017).

(2) The motions of defendants Merck & Co. Inc., Merck Sharp & Dohme Corp., and McKesson Corp. to dismiss the first amended complaint of plaintiff (Doc. ## 49, 50) are GRANTED without prejudice with respect to the remaining counts on the ground that plaintiff has failed to satisfy the requirements of Rule 8(a) of the Federal Rules of Civil Procedure. The complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). The deficiencies of the complaint in this regard are manifest and need no further discussion beyond the well-reasoned analysis of Judge James Moody Jr. in Erickson v. Merck & Co., 2018 WL 2357273 (M.D. Fla. May 17, 2018) (dismissing a sufficiently similar complaint). See also Weiland v. Palm Beach Cty. Sheriff's Office, 792 F.3d 1313 (11th Cir. 2015).

(3) Plaintiff may file an amended complaint with respect to the remaining counts within 15 days from the date of this order. Any amended complaint must be limited to 40 pages. See e.g. complaints in Elmegreen v. Merck & Co., Inc. et al, 2:17-cv-2044; Trapp v. Merck & Co., Inc. et al, 2:18-cv-3866.

(4) The action will be dismissed with prejudice without further notice if the amended complaint is not timely filed.

BY THE COURT:

Haasep Bartle J.